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CINCPAC

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CINCPAC AND CINCEUR FOR POLAD, KUWAIT POUCH BAGDAD

FOLLOWING REPEAT USUN 3534 ACTION SECSTATE SEP 1

QUOTE: C O N F I D E N T I A L USUN 3534

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: CLASSIFIED WEEKLY REPORT LAW OF THE SEA

CONFERENCE - AUGUST 23-27, 1976

COMMITTEE I:

1. C-I DEVOTED THE ENTIRE WEEK TO CONTINUED DISCUSSION OF THE SYSTEM OF EXPLOITATION AND PROCEDURAL DECISION ON THE ESTABLISHMENT OF A NEGOTIATING MECHANISM FOR THAT SUBJECT. THE SUBSTANTIVE DISCUSSIONS ON THE SYSTEM OF EXPLOITATION EVIDENCED LITTLE MOVEMENT AMONG THE DEVELOPING COUNTRIES AWAY FROM THEIR INTRODUCED ARTICLES WHICH DENY GUARANTEED ACCESS FOR STATES AND PRIVATE PARTIES. THE DEBATE CONTINUES TO BE DOMINATED BY A HANDFUL OF EXTREMISTS, PARTICULARLY THE ARAB STATES, WHO APPEAR TO BE SEIZING EVERY OPPORTUNITY BOTH ON SUBSTANCE AND PROCEDURE TO STALL ANY PROGRESS IN C-I'S WORK. AT MID-WEEK, CONFIDENTIAL

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THE C-I WORKSHOP AGREED ON THE ESTABLISHMENT OF A NEGOTIA-

TING GROUP OF 27 MEMBERS WITH THE MANDATE TO NEGOTIATE THE SYSTEM OF EXPLOITATION. IN FACT, THE FORMAT OF THE NEGOTIATING GROUP, WHICH IS OPEN-ENDED AND MEETS IN THE SAME COMMITTEE ROOM AS THE WORKSHOP AND WITH THE SAME CO-CHAIRMAN (JAGOTA OF INDIA AND SONDAAL OF THE NETHERLANDS), DIFFERS LITTLE FROM THAT OF THE WORKSHOP. WE EXPECT THAT LITTLE PROGRESS CAN BE MADE ON THE SYSTEM OF EXPLOITATION AS LONG AS EXTREMIST LDCS CONTINUE TO CONTROL THE WORK OF NOT ONLY THE COMMITTEE AND ITS WORKSHOP BUT ALSO OF THE NEGOTIATING GROUP.

2. BASED ON PRIVATE CONSULTATIONS AND EXTENSIVE LIAISON REPORTING, WE CAN NOW IDENTIFY THREE MAJOR TRENDS AT MID-SESSION WHICH ARE DOMINATING THE THINKING OF THE G-77. THE FIRST IS THAT THE ARAB STATES ARE CONSCIENTIOUSLY FOLLOWING A STRATEGY TO STALL COMMITTEE I. THE ARABS DO NOT IDENTIFY ANY REASON FOR THIS ASIDE FROM IDEOLOGY. ONE POSSIBILITY IS THAT OIL-PRODUCERS BELIEVE THERE MAY BE HYDROCARBONS IN THE DEEP SEABED AND, ACCORDINGLY, WISH TO HAVE THE PRODUCTION CONTROL POWERS OF THE AUTHORITY IN ARTICLE 9 EXTENDED TO COVER HYDROCARBONS. A LESS OBVIOUS REASON FOR ARAB INTRANSIGENCE MAY BE THEIR COMMITTEE II POSITION ON THE CONTINENTAL MARGIN BOUNDARY, WHICH OPPOSES GRANTING COASTAL STATES BROAD MARGIN JURISDICTION. IF THEY WERE TO SUCCEED IN COMMITTEE II IN ACHIEVING A NARROW MARGIN RESULT, POTENTIAL HYDROCARBON RESOURCES WOULD THEN FALL WITHIN THE INTERNATIONAL AREA AND UNDER THE AUTHORITY'S CONTROL. THE LIKELIHOOD OF OIL ON THE OUTER MARGINS APPEARS TO BE A MORE PLAUSIBLE EXPLANATION OF THE BEHAVIOR OF THE ARAB GROUP IN COMMITTEE I. SECOND, ALTHOUGH THE ISSUE IS RARELY RAISED IN COMMITTEE I DISCUSSIONS, PRIVATE CONSULTATIONS INDICATE A GROWING TENDENCY ON THE PART OF DEVELOPING COUNTRIES TO IDENTIFY THE FAILURE TO ESTABLISH A VIABLE ENTERPRISE AS THE CHIEF MOTIVATION BEHIND EXTREME GROUP OF 77 POSITIONS AGAINST GUARANTEED STATE ACCESS. AT THE SAME TIME, THERE IS A GROWING BELIEF THAT THE US IS ADOPTING INFLEXIBLE POSITIONS IN COMMITTEE I IN AN ATTEMPT TO STALL THE NEGOTIATION, A TACTICAL POSTURE WHICH IS IRRITATING MANY LDCS WHO FEEL THIS SESSION WAS CONVENED AT THE SOLE BEHEST OF THE

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UNITED STATES.

3. A MAJOR DEVELOPMENT THIS WEEK WAS THE FORMAL NOTIFICATION BY THE UK DELEGATION THAT THEY WOULD NOT SUPPORT THE US PROPOSAL ON COMPOSITION AND VOTING IN THE COUNCIL, CHARGING THAT IT MIGHT BE PERCEIVED AS A "WRECKING MOVE" AND WOULD OPEN THE US TO CHARGES THAT WE HAD CONTRIBUTED TO THE FAILURE OF THE CONFERENCE. THE UK HAS PREPARED

ITS OWN PROPOSAL ON COUNCIL VOTING, WHICH INVOLVES VERY HIGH VOTING REQUIREMENTS IN THE CONTEXT OF A COLLEGIAL SYSTEM, AND THEY MAY BE SEEKING EC SUPPORT FOR THEIR APPROACH. US DEL INTENDS TO CONVENE GROUP OF FIVE EXPERTS MEETING IN COMING WEEK TO CONSIDER COUNCIL PROPOSAL AND ATTEMPT TO BRING OUT INTO THE OPEN UK INTENTIONS.

COMMITTEE II:

4. LITTLE PROGRESS HAS BEEN MADE ON ANY OF THE ISSUES DURING WEEK OF AUGUST 23-27. DUE TO THE LINKAGE OF COMMITTEE II AND COMMITTEE III ISSUES, NEGOTIATIONS ARE, AT BEST, SLOW. A BASIC POLITICAL WILL TO NEGOTIATE THE REMAINING ISSUES IS REQUIRED. UNLESS A REASONABLE ACCOMMODATION BETWEEN DIVERGENT INTERESTS IS FOUND, ANY PROGRESS WILL BE DIFFICULT.

5. ECUADOR INTRODUCED A NEW ARTICLE ON PRINCIPLES OF MANAGEMENT FOR HIGHLY MIGRATORY SPECIES (ART. 53) WITH ORIGIN OF SUPPORT CLEARLY REFLECTING MANIPULATION OF ISSUE SO AS TO IMPACT ON QUESTION OF LEGAL STATUS OF ECONOMIC ZONE. US DEL DOES NOT INTEND TO INTERVENE PUBLICLY ON THIS ISSUE UNLESS IT IS REOPENED FOR DEBATE. OUR POSITION HAS BEEN MADE TO CHAIRMAN FORCEFULLY.

COMMITTEE III:

6. GENERAL. ALTHOUGH CHAIRMAN YANKOV HAD ORIGINALLY EXPECTED TO FINISH COMMITTEE WORK THIS WEEK, IT NOW SEEMS LIKELY THAT COMMITTEE-LEVEL WORK COULD EXTEND UNTIL THE END OF THE SESSION. YANKOV IS NOT PUSHING THE PACE AND IS LETTING ALL DELEGATIONS SPEAK OUT ON THEIR POSITIONS. HE CONTINUES TO FEEL THAT HE

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HAS ONLY TWO SERIOUS ISSUES TO SOLVE--STANDARD-SETTING IN THE TERRITORIAL SEA REGARDING VESSEL POLLUTION AND THE BASIC REGIME FOR SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE. SINCE THERE ARE EFFORTS UNDERWAY TO NEGOTIATE THESE POINTS, HE IS NOT CONCERNED ABOUT THE PACE IN THE OTHER ISSUES.

7. MARINE POLLUTION. ON THE QUESTION OF STANDARD-SETTING FOR VESSEL POLLUTION IN THE TERRITORIAL SEA, THE UK HAS CONTINUED TO PUSH FOR RESTRICTIONS ELIMINATING COASTAL STATE AUTHORITY FOR DESIGN, CONSTRUCTION, EQUIPMENT, AND MANNING REGULATIONS. IN A PRIVATE BILATERAL, THEY TOLD US THEY HAD NO FLEXIBILITY ON THIS POINT. HOWEVER, FACED WITH A FIRM STAND FROM US, THEY AGREED TO RAISE THE ISSUE WITH LONDON. NEW

ZEALAND WILL PROPOSE AN AMENDMENT NEXT WEEK WHICH WOULD ACCEPT SUCH RESTRICTIONS ONLY IF THE MATTERS WERE COVERED BY APPLICABLE INTERNATIONAL REGULATIONS. WE AND CANADA URGED NEW ZEALAND TO DO THIS IN HOPES OF FINDING A COMPROMISE WHICH PRESERVED THE ESSENCE OF OUR POSITION.

8. SCIENTIFIC RESEARCH. CHAIRMAN YANKOV HELD THE FIRST MEETING OF HIS PRIVATE HEADS OF DELEGATION GROUP ON THE SCIENTIFIC RESEARCH PROBLEM. THE SOVIET UNION INTERVENED EARLY TO INDICATE ITS WILLINGNESS TO ACCEPT THE DEVELOPING COUNTRY POSITION AND THEN CHARACTERIZED THAT POSITION AS SUPPORTING TOTAL, UNQUALIFIED CONSENT. DEVELOPING COUNTRIES IN THE GROUP STRESSED THE IMPORTANCE OF THE CONSENT CONCEPT. SOME EXPRESSED A WILLINGNESS TO ACCEPT DELETION OF THE COASTAL STATE RIGHT TO DENY CONSENT FOR INTERFERENCE WITH COASTAL STATE ECONOMIC ACTIVITIES IF THE CONSENT CONCEPT WERE ACCEPTED. US MADE A STRONG AND LENGTHY INTERVENTION SUPPORTING POSITION STATED BY THE SECRETARY IN HIS APRIL 8 SPEECH. GROUP WILL MEET AGAIN NEXT WEEK.

DISPUTE SETTLEMENT:

9. DESPITE EARLIER WARNING THAT THERE WILL BE A ROYAL BATTLE ON ARTICLE 18 RELATING TO EXCEPTIONS FROM DISPUTE
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SETTLEMENT, THE DEBATE WAS QUITE MODERATE. THERE WAS NO UNITED FRONT OF THE "77", AND A VARIETY OF SUGGESTIONS FOR AMENDMENTS WERE PRESENTED, THUS ENABLING THE PRESIDENT TO REDRAFT THE TEXT ANY WAY HE CONSIDERS PROPER. IT IS QUITE LIKELY THAT HE WILL REPLACE THE "DUE REGARD TO ANY SUBSTANTIVE RIGHTS" OF OTHER STATES CLAUSE WITH SOME OTHER PROVISION LIMITING THE DISCRETION OF THE COASTAL STATE TO SOME, PROBABLY QUITE LIMITED, EXTENT.

SCRANTON UNQUOTE KISSINGER

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